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UNITED STATES NATIONAL SECURITY STRATEGY IN AFRICA TARGETS CHINESE DOMINANCE AND CORRUPTION

Trump Administration’s National Security Strategy Promotes a U.S.-Africa Trade-Based “Alternative to China’s Extractive Economic Footprint” and Threatens Sanctions and Foreign Aid Penalties for Corrupt Practices and Other Wrongs

The Trump Administration’s U.S. National Security Strategy, released in December 2017, is a self-described “America first” “strategy of principled realism” that identifies and outlines plans to tackle military, political and economic threats facing the United States globally and in specific regions of the world.¹

The Trump Administration’s Political and Economic Strategies in Africa

In Africa, the Trump Administration’s broad objectives are to cultivate stable sovereign states that are economically integrated with the world and each other, capable of meeting citizens’ needs, and able to manage security threats.²

To further these objectives, the NSS outlines steps that the United States will take on the political and economic fronts. In the political realm, the United States will “encourage reform, working with promising nations to promote effective governance, improve the rule of law, and develop institutions accountable and representative to citizens.”³

In the economic sphere, the Trump Administration seeks to “expand trade and commercial ties to create jobs and build wealth for Americans and Africans” through “work with reform-oriented governments to help establish conditions that can transform them into trading partners,” improve African

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¹ The White House, [National Security Strategy of the United States of America](#), December 2017 [the “NSS”]; “The Strategy in a Regional Context,” Africa, 52-53. Federal law requires the President to each year submit to Congress a national security strategy report in both classified and unclassified form. 50 U.S.C. 404a. However, not all presidents have issued national security strategy reports annually.

² *Id.*

³ *Id.* at 52.

“Some Chinese practices undermine Africa’s long-term development by corrupting elites [and] dominating extractive industries . . . [The United States] will offer American goods and services . . . as an alternative to China’s often extractive economic footprint on the continent.”

-National Security Strategy of the United States (2017)

business environments, and support “economic integration among African states.”⁴

BATTLEGROUND AFRICA

A U.S.-Africa Trade-Based Relationship to Counter China’s Dominance and “Corrupting” Influence on the Continent

Notably, in the two pages of the NSS that are devoted to the National Security Strategy in the Africa context, none of Africa’s 54 nations are mentioned, but China is named twice.⁵

The NSS notes with concern China’s “expanding . . . economic military presence in Africa, growing from a small investor in the continent two decades ago into Africa’s largest trading partner today.”⁶ China’s methods and influence in Africa are described unflatteringly. “Some Chinese practices,” the NSS states bluntly, “undermine Africa’s long-term development by corrupting elites, dominating extractive industries, and locking countries into unsustainable and opaque debts and commitments.”⁷

To counter Chinese presence and influence in Africa, the NSS outlines a trade-not-aid approach and suggests that U.S. political and economic efforts will be geared toward willing or partnership-ready nations that are “promising,” are “reform-oriented,” and/or “seek to move beyond assistance to partnerships

⁴ *Id.* at 52-53.

⁵ All of the other region-specific sections of the NSS mention relevant countries by name. For example, Egypt, Saudi Arabia and Iran are discussed in the Middle East section at 48-50; Pakistan and Afghanistan are discussed in the South and Central Asia section at 50; Ukraine, Georgia, the United Kingdom, and Germany are mentioned in the Europe section at 47-48; Japan, Australia, New Zealand, North Korea, South Korea, and Thailand are named in the geopolitically-titled “Indo-Pacific” section at 45-47; and, Venezuela, Cuba, Honduras, and El Salvador are discussed in the Western Hemisphere section at 51.

It is worth noting that China is the most-mentioned nation (other than the United States) in the NSS. A simple word search of the NSS yields 32 mentions of China (Russia is second with 25; India appears 8 times; Afghanistan, where the U.S. remains engaged in a protracted war, is mentioned 5 times).

⁶ *Id.* at 52.

⁷ *Id.* at 52-53. While the NSS is not the first U.S. government or other policy document to note China’s dominant presence or accuse Chinese parties of corrupt or other unfair or opaque practices in Africa, the document, compared to prior U.S. administrations’ public documents, stands out for its unvarnished language. For example, the U.S. National Security Strategy of 2015, issued by the Obama Administration, discussed corruption in Africa and elsewhere, but employed relatively aloof language to do so. (“Corruption is endemic and public health systems are broken in too many places.” [U.S. National Security Strategy](#), 2015, 26 (Section entitled “Invest in Africa’s Future”)).

that promote prosperity.”⁸ Specifically, the Trump Administration will “offer American goods and services, both because it is profitable for . . . [the United States] and because it serves as an alternative to China’s often extractive economic footprint on the continent.”⁹

Trump Administration Prepared to Resort to Sanctions and Foreign Aid Penalties for Corruption and Other Wrongs

The Trump Administration does not spell out in the NSS any specific and affirmative steps it will take to progress from stated policy to on-the-ground relationships in Africa that are based primarily in trade and commerce. But, the Trump Administration has raised in the NSS the prospect of sanctions and foreign aid suspensions in response to corruption and atrocities in Africa.

Potential Sanctions for Perpetrators of Corrupt Practices in Africa

Under the heading of political “priority actions,” the NSS states that: “If necessary, we are prepared to sanction government officials and institutions that prey on their citizens and commit atrocities.”¹⁰ The NSS does not describe potential sanctions measures, and it is not clear if such sanctions would take the form of economic and trade sanctions¹¹ that target specific nations, whole governments, specific governmental units, or certain individuals and entities (*e.g.*, state-owned or private enterprises). Nor does the NSS specify the scope and reach of such sanctions, specifically whether they would be directed only at African government officials and institutions and/or non-African individuals and entities that engage in or facilitate corruption and the commission of atrocities.

Considering realities outside of the four corners of the NSS, as discussed below, recent global anti-corruption measures adopted by the Trump Administration suggest that any sanctions targeting corruption in Africa may be broad in scope and reach (*e.g.*, applicable to African and non-African parties) and that, if nothing else, the sanctions threat should be taken seriously.

“The Trump Administration has raised the prospect of sanctions and foreign aid suspensions against ‘government officials and institutions’ that engage in and commit atrocities in Africa.”

⁸ NSS at 52-53.

⁹ *Id.* at 53. Making the point expressly that offering American goods and services is also “profitable for [the United States]” is in keeping with the “America First” National Security Strategy and driving philosophy of the Trump Administration.

¹⁰ *Id.* at 52.

¹¹ Such as those that are designed to advance U.S. foreign policy and national security objectives and are administered by the U.S. Treasury Department’s Office of Foreign Assets Control.

“Recent anti-corruption steps taken by the Trump Administration make the prospect of sanctions all the more real. On December 20, 2017—within two days of the issuance of the NSS on December 18, 2017—the President issued an Executive Order “Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption.”

The Trump Administration’s “America First” Posture and Recent Global Magnitsky Sanctions Suggest that the Threat of Anti-Corruption Sanctions is Real

Put in the context of the Trump Administration’s “America First” policy framework and its targeting of real or perceived unfair trade practices (including corruption) by foreign nations and other actors, the NSS’s warning that sanctions may be deployed to counter corrupt practices in Africa should not be written off as an empty threat.

Moreover, recent anti-corruption steps taken by the Trump Administration make the prospect of sanctions all the more real. On December 20, 2017—within two days of the issuance of the NSS on December 18, 2017—the President issued an Executive Order “Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption.”¹²

EO 13818, issued pursuant to the Global Magnitsky Human Rights Accountability Act and other federal statutes,¹³ finds that “the prevalence and severity of human rights abuse and corruption” committed wholly or substantially outside of the United States, “have reached such scope and gravity that they threaten the stability of international political and economic systems”¹⁴ and, for the foregoing and other reasons, “constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States” justifying the declaration of a national emergency and the adoption of countermeasures.¹⁵

Global in scope, EO 13818 targets individuals and entities that are determined to have been “responsible for or complicit in . . . serious human rights abuse.”¹⁶ EO 13818 casts a wide anti-corruption net, targeting, *inter alia*, “current or former government official[s]” and persons acting for or on their behalf who have “directly or indirectly . . . engaged in corruption,”

¹² Exec. Order No. 13,818, “Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption, 82 Fed. Reg. 60,839 (Dec. 20, 2017) [“**EO 13818**”].

¹³ Federal statutory authorities for EO 13818, as cited thereby, are: the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et. seq.), the Global Magnitsky Human Rights Accountability Act (Public Law 114-328), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code (authorizing the President to delegate authority to certain heads of Executive Branch departments or agencies). The Global Magnitsky Human Rights Accountability Act was enacted as part of the National Defense Authorization Act for Fiscal Year 2017, Pub. Law No. 114-328 (Dec. 23, 2016) [the “**Magnitsky Human Rights Act**”].

¹⁴ EO 13818, preamble.

¹⁵ *Id.*

¹⁶ *Id.* at Section 1(a)(ii)(A).

“Executive Order 13818 is global and scope and casts a wide anti-corruption net, targeting . . . the misappropriation of state assets, the expropriation of private property for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.”

including the misappropriation of state assets, the expropriation of private property “for personal gain,” “corruption related to government contracts or the extraction of natural resources, or bribery.”¹⁷ The facilitation of corruption, including after-the-fact, is squarely within EO 13818’s punitive scope—for example, the “transfer or the facilitation of the transfer of the proceeds of corruption” is an independent basis for the imposition of sanctions.¹⁸

In connection with corruption in and involving Africa, African and non-African nationals and entities may be sanctioned pursuant to EO 13818. To date, 52 individuals and entities have been “blocked” as Specially Designated Nationals, including the 13 individuals of various nationalities (some African) who were designated by EO 13818 on December 20, 2017.¹⁹

For covered human rights abuses and corrupt acts, EO 13818 imposes, *inter alia*,²⁰ “blocking” measures freezing of sanctioned parties’ “property and interests in property”²¹ “in the possession or control of any United States person” (including U.S. persons who are individuals or entities, such as businesses and banks).²² Parties sanctioned under EO 13818 are effectively cut off from the United States financial system.

¹⁷ *Id.* at Section 1(a)(ii)(B)(1).

¹⁸ *Id.* at Section 1(a)(ii)(B)(2). Persons sanctioned for facilitation under this Section would very likely be exposed to U.S. anti-money laundering laws.

¹⁹ EO 13818, Annex. A search of the sanctions lists maintained by the U.S. Treasury Department’s Office of Foreign Assets Control indicates that as of February 25, 2018, 52 individuals and entities are Specially Designated Nationals. Among them is Dan Gertler, a dual national of Israel and the Democratic Republic of Congo, and a direct target of and central figure in U.S. and foreign corruption investigations and actions that have been well-covered by U.S. and foreign news outlets (See, for example, Thomas Wilson, [Congo Bribery Probe Puts Israeli Billionaire’s Future on Hold](#), Bloomberg, February 22, 2018).

²⁰ Among other sanctions measures, EO 13818 also “suspends” the entry of sanctioned parties into the United States, as immigrants or nonimmigrants. *Id.* at Section 2.

²¹ Blocked property is “broadly defined” by OFAC to “to include any property or interest in property, tangible or intangible, including present, future or contingent interests. A property interest subject to blocking includes interests of any nature whatsoever, direct or indirect.” OFAC, [Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property are Blocked](#), August 13, 2014. “Interests in property” means property that is directly or indirectly owned 50% or more by one or more sanctioned parties. *Id.* For more background on OFAC’s “50% Rule,” see also MassPoint PLLC, [United States Adds Russian Direct Investment Fund, Other Russian Financial Services Actors to Sectoral Sanctions List](#) (Aug. 7, 2015).

²² *Id.* at Section (1)(a)(ii)(B). “United States person” means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.” *Id.* at Section 6(c). For its purposes, EO 13818 defines the term

“Parties in and involved in Africa should take note of the U.S. National Security Strategy . . . and interpret it in the context of the Trump Administration’s “America First” posture . . . as well as the recent adoption of . . . U.S. anti-corruption sanctions pursuant to EO 13818 and the Magnitsky Human Rights Act.”

Potential Suspension of Foreign Aid

As a last resort, the Trump Administration has stated its willingness to suspend foreign aid “rather than see it exploited by corrupt elites.”²³ The NSS does not indicate whether all “aid” is subject to suspension, or if, for example, only non-humanitarian aid or aid provided directly by the United States (*i.e.*, not through a multilateral or other organization) would potentially be suspended.

Closing Takeaways

The NSS promotes a trade-not-aid approach to U.S. engagement in and with Africa. The Trump Administration has not outlined in the NSS any specific incentives that might be used to induce engagement on trade-based terms; the NSS seems to suggest that the inherent appeal of the “offer of American goods and services” is sufficient to induce engagement.

As to potential punitive measures that might be deployed to implement the Trump Administration’s national security strategy in Africa, the NSS is more descriptive, but still imprecise. As discussed above, the NSS does not specify what types of “sanctions” may be utilized to counter corruption and other wrongs. Nor does the NSS indicate whether all or some categories of foreign aid might be suspended in response to corruption.

Such uncertainty notwithstanding, parties in and involved in Africa should take note of the U.S. National Security Strategy in Africa, and assess it in the context of the Trump Administration’s “America First” posture, its willingness to counter real or perceived unfair trade practices (including corruption), its apparent hostility to foreign aid as a concept and in practice, as well as the recent adoption of global-in-scope U.S. anti-corruption sanctions pursuant to EO 13818 and the Magnitsky Human Rights Act.

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“person” to mean “an individual or entity” and the term “entity” to mean “a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.” *Id.* at Section 6(a)-(b).

²³ NSS at 52 (“Where there is no alternative, we will suspend aid rather than see it exploited by corrupt elites.”)